

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAROLD BROEK,

Defendant.

No. CR13-5414BHS

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and David Reese Jennings, Assistant United States Attorney for said District, Defendant, HAROLD BROEK, and his attorney, Harry Steinmetz, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his plea of guilty to the following charges contained in the Information: Criminal Conflict of Interest, as charged in Count 1, in violation of Title 18, United States Code, Section 208.

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his plea of guilty, he

1 will be placed under oath. Any statement given by Defendant under oath may be used by the
2 United States in a prosecution for perjury or false statement.

3 **3. Elements of the Offense.** The elements of the offense of Conflict of Interest, as
4 charged in Count 1, in violation of Title 18, United States Code, Section 208, are as follows:

5 (1) Defendant was an employee of the executive branch or an independent agency;

6 (2) He participated personally and substantially as a government employee;

7 (3) Through decision, approval, disapproval, recommendation, the rendering of
8 advice, investigation, or otherwise;

9 (4) In a judicial or other proceeding, application, request for a ruling or other
10 determination, contract, claim, controversy, charge, accusation, arrest, or other
11 particular matter;

12 (5) In which the employee or any of the following had a financial interest:

13 A. The employee's spouse;

14 B. An organization in which the employee is serving as a director,
15 officer, or employee;

16 C. A person or organization with whom the employee is negotiating for
17 or has any arrangement for prospective employment.

18 **4. The Penalties.** Defendant understands that the statutory penalties for the offense
19 of Conflict of Interest, as charged in Count 1, are as follows:

20 Count 1 (Conflict of Interest): Imprisonment for up to five (5) years, a fine of up to two
21 hundred fifty thousand dollars and no/100 dollars (\$250,000.00), a period of supervision
22 following release from prison of up to three (3) years, and a special assessment of one hundred
23 and no/100 dollars (\$100.00). If Defendant receives a sentence of probation, the probationary
24 period could be up to five (5) years. Defendant agrees that the special assessment shall be paid
25 at or before the time of sentencing.

26 Defendant understands that supervised release is a period of time following imprisonment
27 during which he will be subject to certain restrictions and requirements. Defendant further
28 understands that if supervised release is imposed and he violates one or more of its conditions,

1 Defendant could be returned to prison for all or part of the term of supervised release that was
 2 originally imposed. This could result in Defendant's serving a total term of imprisonment greater
 3 than the statutory maximum stated above.

4 Defendant understands that in addition to any term of imprisonment and/or fine that is
 5 imposed, the Court may order him to pay restitution to any victim of the offense, as required by
 6 law. Defendant further understands that a consequence of pleading guilty may include the
 7 forfeiture of certain property either as a part of the sentence imposed by the Court, or as a result
 8 of civil judicial or administrative process.

9 Defendant agrees that any monetary penalty the Court imposes, including the special
 10 assessment, fine, costs, or restitution, is due and payable immediately and further agrees to
 11 submit a completed Financial Statement of Debtor form as requested by the United States
 12 Attorney's Office.

13 **5. Rights Waived by Pleading Guilty.** Defendant understands that by pleading
 14 guilty, he knowingly and voluntarily waives the following rights:

- 15 a. The right to plead not guilty and to persist in a plea of not guilty;
- 16 b. The right to a speedy and public trial before a jury of his peers;
- 17 c. The right to the effective assistance of counsel at trial, including, if
 18 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 19 d. The right to be presumed innocent until guilt has been established beyond a
 20 reasonable doubt at trial;
- 21 e. The right to confront and cross-examine witnesses against Defendant at
 22 trial;
- 23 f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- 24 g. The right to testify or to remain silent at trial, at which trial such silence
 25 could not be used against Defendant; and
- 26 h. The right to appeal a finding of guilt or any pretrial rulings.

6. **United States Sentencing Guidelines.** Defendant understands and acknowledges that, at sentencing, the Court must consider the sentencing range calculated under the United States Sentencing Guidelines, together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine his applicable Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

8. **Restitution.** Defendant shall make restitution to the United States in the amount of \$52,400.16, with credit for any amounts already paid. Said amount shall be due and payable

1 immediately and shall be paid in accordance with a schedule of payments as proposed by the
2 United States Probation Office and ordered by the Court.

3 9. **Statement of Facts.** The parties agree on the following facts. Defendant admits
4 he is guilty of the charged offense.

5 a. LTC Harold Broek (A/K/A/ Hal Broek), served in Iraq as an officer for the
6 United States Army. While serving in Iraq, LTC Broek worked in government contracting. To
7 his advantage and to the detriment of the United States, LTC Broek used his position of
8 authority in the United States Army, his assignment as a contracting officer, his knowledge of
9 government contracting, and his access to and relationship with Rohit Goel and a company
10 called "Avalon."

11 b. As a contracting official with the United States Army, LTC Broek received
12 extensive ethics training throughout his career. The ethics training covered conflicts of interest,
13 including financial conflicts of interest. LTC Broek was trained each year, among other things,
14 that contracting officers and their families were prohibited from benefitting from government
15 contracts, and from relationships with government contractors. In addition, LTC Broek was
16 required each year to complete an OGE Form 450. The OGE Form 450, or "Confidential
17 Financial Disclosure Report," is a federal government form designed to make federal employees
18 like LTC Broek disclose financial information regarding potential conflicts of interest. The
19 OGE Form 450 must be certified as true by the party completing it. The United States Army
20 uses these forms to ensure that its Contracting Officials are free from taint. Here, LTC Broek
21 filled out and certified a Form 450 for each year he served as an Army Contracting Official.

22 c. While in Iraq in 2007, LTC Broek served as Chief of Contracting at the
23 Tikrit Regional Contracting Center, Tikrit, Iraq. As Chief of Contracting, LTC Broek developed
24 a friendly relationship with Rohit Goel, the principal of "Avalon International Limited"
25 (Avalon), a government contractor.

26 e. While still in Iraq, LTC Broek made plans and took steps to form a
27 company, to be staffed with members of his immediate family, that could contract with Rohit
28 Goel and Avalon on government contracts. Before leaving Iraq, LTC Broek made arrangements

1 and entered into an illegal agreement with Rohit Goel. According to this agreement, Goel would
2 send certain government contracts, awarded by the United States to Goel and Avalon, to the new
3 company formed by Broek and his family. Pursuant to this arrangement, Rohit Goel agreed to
4 award government contracts to Broek's new company, to pay Broek's new company 30% of the
5 profit on such contracts, and to front necessary funds or finance any contract expenditures
6 Broek's company would incur in purchasing goods to perform under the contracts.

7 f. Before LTC Broek left Iraq in 2007, his family in the Western District of
8 Washington began taking formal steps to form a company that would receive contracts from
9 Goel and Avalon. The family, at Broek's direction, set up a company called Global Motion.
10 The sole purpose of Global Motion was to contract with Avalon and Rohit Goel. LTC Broek
11 participated in the initiation and creation of Global Motion, and, further, handled all initial
12 business arrangements with Avalon. The groundwork for the business relationship between
13 Rohit Goel and LTC Broek's family was established long before LTC Broek returned to
14 Washington State from Iraq. LTC Broek and no one else in "Global Motion" had the existing
15 relationship with Avalon and Rohit Goel. Only LTC Broek knew of Avalon's needs, abilities,
16 and contacts. Only LTC Broek knew about government contracts in general, which government
17 contracts were likely to be given to Avalon, and which government contracts had already been
18 awarded to Avalon.

19 g. After LTC Broek returned to his home in Lacey, Washington, in August
20 2007, he communicated by email with Rohit Goel. On August 27, 2007, LTC Broek used his
21 wife's email address to contact Avalon from the United States. LTC Broek discussed his plan
22 for contracting with Avalon through Global Motion. LTC Broek stated as follows:

23 I wanted to let you know that from abusines (sic) point of view...that we are set-up
24 with a formal LLC now and are ready to talk the details of business with you.
25 Have fully trained everybody here in the process and believe they are ready to start
26 work.
27
28

1 I think it would be a good idea for you and to talk on the telephone (sic) reference
2 details so we can close the loop and start providing you with very low cost items to
3 make you even more competitive in reference to RFQs. Please let me know when
4 the best time to talke (sic) with you is... can call you in the evening my time to best
5 make ourt (sic) timelines work.

6
7 Looking forward to hearing from you soon!

8
9 Hal

10
11 h. Before leaving Iraq and returning to the United States, LTC Broek
12 participated personally and substantially in awarding a contracts to Avalon. Specifically, on July
13 7, 2007, shortly before he left Iraq to return to Lacey, Washington, LTC Broek signed a waiver
14 shortening the deadline on contract W91GLF-07-M-0759 (for the purchase and delivery of line-
15 of-sight radios). By signing this waiver and shortening the deadline, LTC Broek decreased the
16 chances that Avalon's competitors might win the contract. When LTC Broek signed the waiver,
17 he participated personally and substantially in the award of the contract. Moreover, when LTC
18 Broek signed the waiver, he had a financial interest in the contract because of the agreement he
19 struck with Rohit Goel to award contracts to his family.

20 i. On July 20, 2007, one of LTC Broek's subordinates in Iraq awarded
21 contract (W91GLF-07-M-0759 for line-of-sight radios), valued at \$162,151.00, to Rohit Goel
22 and Avalon. Rohit Goel, in turn, awarded the contract for line-of-sight radios to LTC Broek's
23 family's company, Global Motion.

24 j. On September 17, 2007, Avalon fronted \$99,978.00 to Global Motion, by
25 means of a wire transfer to Global Motion's bank account, to finance the purchase of the line-of-
26 sight radios, and in order to pay Global Motion its share or commission under the contract. To
27 fill the line-of-sight radio contract, Global Motion spent \$58,733 to purchase the radios and have
28 them shipped to Iraq. Global Motion retained the balance in its account. Global Motion's

1 records show that the profit from this first contract was \$29,871.90. The contract was completed
2 by the end of September.

3 k. According to tax returns, Global Motion made a profit in 2007 and 2008 of
4 \$52,400.16.

5 10. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the
6 United States Attorney's Office for the Western District of Washington agrees not to prosecute
7 Defendant for any additional offenses known to it as of the time of this Agreement that are based
8 upon evidence in its possession at this time, and that arise out of the conduct giving rise to this
9 investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute
10 all of the criminal charges the evidence establishes were committed by Defendant solely because
11 of the promises made by Defendant in this Agreement. Defendant agrees, however, that for
12 purposes of preparing the Presentence Report, the United States Attorney's Office will provide
13 the United States Probation Office with evidence of all conduct committed by Defendant.

14 The United States further agrees not to prosecute Dustin Broek, Susan Broek and Janina
15 Broek for their roles in this conflict of interest, or for any other federal criminal violations they
16 might have committed in seeking and performing contracts from and for Avalon.

17 Defendant agrees that any charges to be dismissed before or at the time of sentencing
18 were substantially justified in light of the evidence available to the United States, were not
19 vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any
20 future claims under the "Hyde Amendment," Pub.L. No. 105-119(1997).

21 11. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines
22 provisions apply to this case:

- 23 a. A base offense level of 6, pursuant to USSG Section 2C1.3(a);
- 24 b. A four-point addition to Defendant's Guideline level because the offense
25 involved actual harm to the government.
- 26 c. A two-point upward adjustment for leadership under 3.B1.1.

27 12. **Acceptance of Responsibility.** The United States acknowledges that if Defendant
28 qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3E1.1(a), and his

1 total offense level should be decreased by two (2) levels because Defendant has clearly
2 demonstrated acceptance of responsibility for his offense.

3 **13. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if Defendant
4 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and
5 Defendant may be prosecuted for all offenses for which the United States has evidence.
6 Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
7 Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant
8 also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any
9 objection to the re-institution of any charges in the Indictment that were previously dismissed or
10 any additional charges that had not been prosecuted.

11 Defendant further understands that if, after the date of this Agreement, Defendant should
12 engage in illegal conduct, or conduct that is in violation of his conditions of (examples of which
13 include, but are not limited to: obstruction of justice, failure to appear for a court proceeding,
14 criminal conduct while pending sentencing, and false statements to law enforcement agents, the
15 Pretrial Services Officer, Probation Officer, or Court), the United States is free under this
16 Agreement to file additional charges against Defendant or to seek a sentence that takes such
17 conduct into consideration by requesting the Court to apply additional adjustments or
18 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
19 advisory Guidelines range, and/or by seeking an upward departure or variance from the
20 calculated advisory Guidelines range. Under these circumstances, the United States is free to
21 seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded
22 by the terms of the plea agreement.

23 **14. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
24 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or
25 the statutory mandatory minimum, if greater than the Guidelines range) that is determined by the
26 Court at the time of sentencing, Defendant waives to the full extent of the law:

- 27 a. any right conferred by Title 18, United States Code, Section 3742 to appeal
28 the sentence, including any restitution order imposed; and

b. any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation.

Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the decisions of the Bureau of Prisons regarding the execution of his sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

15. Voluntariness of Plea. Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce Defendant to enter of guilty.

16. Statute of Limitations. In the event this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to:

- (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
- (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

17. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not

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1 bind any other United States Attorney's Office or any other office or agency of the
2 United States, or any state or local prosecutor.

3 Dated this 23rd day of July, 2013.

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5 
6 HAROLD BROEK
7 Defendant

8
9 
10 HARRY STEINMETZ
11 Attorney for Defendant

12 
13 DAVID REESE JENNINGS
14 Assistant United States Attorney